

Town of Amherst
Zoning Board of Appeals - Special Permit
DECISION

Applicant: Robert Lowry
8 North Leverett Road, Leverett, MA 01054

Owner: Peter Grandonico
25 North Pleasant Street, Amherst, MA 01002

Date Application filed with the Town Clerk: February 16, 2007

Nature of request: Petitioner seeks a Special Permit under Section 3.352.1 of the Zoning Bylaw to operate a Class II restaurant, open until 2 a.m.

Location of property: 23-25 North Pleasant Street, Map 14A, Parcel 50, B-G zone.

Legal notice: Published in the Daily Hampshire Gazette on February 21 and 28, 2007, and sent to abutters on February 21, 2007.

Board members: Barbara Ford, Hilda Greenbaum and Russ Frank

Submissions:

The applicants submitted the following documents:

- A Management Plan;
- A Floor Plan;
- A Site Plan based on an aerial photograph, from the Amherst GIS Viewer, dated February 16, 2007.

Town staff submitted the following documents:

- From the Health Department, a memorandum dated February 27, 2007;
- From the Fire Department, a memorandum dated March 6, 2007;
- From the Planning Department:
 - A memorandum dated February 28, 2007;
 - A Site Plan from the Amherst GIS Viewer, dated February 28, 2007;
 - Two Special Permits issued by the Zoning Board of Appeals to former occupants of the space under consideration: ZBA FY93-12 and ZBA FY 95-8.

Site Visit: March 6, 2007

At the site visit the Board was met by the applicant, Robert Lowry. The Board observed the following:

- The building, located near a busy crossroads in the center of downtown Amherst;
- The interior of the space that is long and narrow;
- The existing counters that will be retained by the new business;
- The locations of the new tables and stools, in the same location as in the previous establishment;
- The kitchen area and food preparation area, in the same location as in the previous establishment;

- The locations of the sinks, existing and proposed;
- The location of the frialator and cooler;
- The rear door, exiting out to Boltwood Walk.

Public Hearing: March 8, 2007

At the pubic hearing Ms. Greenbaum disclosed that Mr. Lowry had once been a tenant at 351 Main Street, a building owned by her family. She stated that she has no financial interest in Mr. Lowry's application and that she will be able to act impartially on the case.

Robert Lowry presented the petition. He made the following comments:

- He wishes to open a restaurant at 23-25 North Pleasant Street;
- The menu will consist primarily of roast beef sandwiches;
- Other menu items will include fried items such as onion rings, French fries and fried chicken nuggets;
- Salads will also be available.

Mr. Lowry reviewed the floor plan for the Board and made these comments:

- The trash receptacle is located behind Rao's Coffee on Kellogg Avenue [on the other side of Boltwood Walk];
- The new restaurant will share recycling facilities with Bueno Y Sano [nearby on Boltwood Walk];
- Parking is not an issue because the business is located in the Municipal Parking Zone;
- The only external lighting will be that which illuminates the sign;
- The proposed sign will be a flat, panel sign with dimensions of 8 feet x 3 feet;
- The sign design will be presented to the Design Review Board and then be submitted to the Zoning Board of Appeals for review and approval prior to installation;
- There is no room for landscaping.

Mr. Lowry reviewed the management plan and made these comments:

- The business will be responsible for snow removal at and near the front door;
- The hours of operation will be 11 a.m. to 2 a.m.;
- There will be 2 or 3 employees present at one time;
- Pre-recorded music will be played inside the restaurant;
- If there is a crowd at the door, an employee will be assigned to monitor the crowd's behavior;
- Waste oil will be handled in one of two ways – either it will be removed using a pumping system or it will be stored outdoors at the rear of the building until it is picked up and taken away;
- Deliveries to the restaurant will be from Boltwood Walk and from Main Street;
- Only small delivery trucks are allowed into Boltwood Walk.

Ms. Ford asked about tableware. Mr. Lowry responded that sandwiches will be served in waxed paper, on reusable trays, and that metal utensils will be available for dining inside and plastic will be available for take-out meals.

Ms. Ford asked about the existing awning. Mr. Lowry stated that the existing awning will be removed.

Ms. Ford asked about the applicant's plans for monitoring his customers. Mr. Lowry responded that an employee will be assigned to manage crowds coming into the store. He noted that there is already a large crowd downtown in this location on weekend nights.

Ms. Ford asked about the applicant's plans for maintaining the cleanliness of the entry way and sidewalk in front of the building. Mr. Lowry stated that his employees will keep the storefront and surroundings clear of debris. He stated that lack of cleanliness would reflect poorly on the business.

Ms. Ford noted that there are two trash cans existing in front of the storefront. She also noted that the applicant will need to be attentive to keeping the neighborhood clean.

Carolyn Holstein, zoning staff assistant, stated that the Department of Public Works picks up trash early on Sunday morning.

Mr. Lowry stated that he would be willing to buy another trash can, identical to those that the town has installed in the downtown area. The Board stated that there might not be an appropriate place for an additional trash can. Mr. Lowry restated his willingness to purchase a new trash can. He also stated that he is willing to empty the public trash can if it overflows.

Mr. Lowry stated that there will be a maximum of three employees on site at one time. One of them will be assigned to be in charge.

The frialator will generate about 5 to 6 gallons of grease per day. It will be emptied into a closed container. The grease may be pumped into a truck or it may be stored outside in a drum, which would be secured with a lock. Mr. Lowry does not have plans to place the drum in an enclosure.

The Board and Mr. Lowry discussed various methods of handling waste oil.

Mr. Lowry stated that the frialator has a hood with an exhaust system built into it. He has been working with the Fire Department on the appropriate design for this area of the restaurant. There will be less cooking equipment under the hood than in the previous restaurant, Fatzo's, because there will be no grill.

Ms. Ford expressed concern about odors emanating from the business. Mr. Lowry stated that there is a vent on the roof that takes the exhaust. Fumes have not been an issue in the past with other businesses that have occupied this space.

Mark Snow, Building Inspector, stated that his department has not received any complaints about odors and that the mechanical systems have been functioning properly. He and Mr. Lowry have met and discussed the issues.

Mr. Frank asked about the frialator. Mr. Lowry stated that it will be used for onion rings, French fries and fried chicken pieces. He is still developing the menu. Hamburgers and hot dogs are not on the menu now. A grill would be needed to cook them. The Board and Mr. Lowry discussed the proposed menu.

Ms. Greenbaum noted that the Management Plan should be changed to show that the building space is at 25 North Pleasant Street. Mr. Lowry acknowledged that the building as a whole is located at 23-25 North Pleasant Street.

Ms. Greenbaum asked about the proposed lighting inside the space. Mr. Lowry stated that Fatzo's had added new track lights with halogen bulbs and that the interior lighting is very good.

Ms. Greenbaum stated that she would like to see the proposed sign and a picture of what the building will look like without the awning.

Ms. Holstein asked whether there would be signs inside and whether there would be a neon sign. Mr. Lowry stated that there would be no other signs inside, only the one sign outside.

Mr. Snow stated that one means of egress is adequate for the proposed occupant loads, as long as the number of people in the restaurant does not exceed 49. The rear exit would not be considered an exit for purposes of the Building Code requirements because patrons would need to walk through the kitchen to gain access to the back door.

Mr. Lowry stated that an occupancy load of 49 people is more than adequate. He plans to keep the identical counter and seating arrangement as Fatzo's. The business will be primarily a take-out business.

Ms. Ford noted that there will be seats for 16 people to sit at tables and counters.

Ms. Ford asked about the applicant's plans to install trash receptacles inside the restaurant. The applicant amended the floor plan to show two trash receptacles near the entry door on the inside of the restaurant.

Ms. Greenbaum MOVED to close the evidentiary portion of the public hearing. Mr. Frank SECONDED the motion. The Board VOTED unanimously to close the evidentiary portion of the public hearing.

Public Meeting – Discussion

At the public meeting the Board discussed the conditions that they would impose if they granted the petition. The Board also discussed its findings.

Public Meeting – Findings:

Under Zoning Bylaw Section 10.38 the Board found that:

10.380 and 10.381 – The proposal is suitably located in the neighborhood and is compatible with existing uses because the use is a Class II restaurant and there are other Class II restaurants in the vicinity, some of which are open until 2:00 a.m.

10.382 and 10.385 – The proposal would not constitute a nuisance and reasonably protects the adjoining premises against detrimental or offensive uses on the site because there will be equipment in the building that will ameliorate odor, music will be limited to the interior of the restaurant, a condition of the permit limits the loudness of the music, the exterior lights will be downcast and the permit requires that employees police the area immediately around the entryway to remove litter and trash and monitor the crowds lined up outside the entryway, as necessary.

10.383 – The proposal would not be a substantial inconvenience or hazard to abutters, vehicles or pedestrians because conditions of the permit require that employees monitor any crowds that gather at the entry way, trash and litter will be removed by employees and deliveries to the restaurant are limited to certain hours.

10.384 – Adequate and appropriate facilities would be provided for the proper operation of the proposed use because the floor plan shows that there will be adequate space for patrons and for equipment to process food items.

- 10.386 - The proposal ensures that it is in conformance with the Parking and Sign regulations because the restaurant is located within the Municipal Parking Zone and therefore has no on-site parking requirements and the sign will be submitted to the Board for review and approval at a public meeting prior to installation.
- 10.388 - The proposal ensures adequate space for off-street loading and unloading of vehicles because deliveries will be limited by the Management Plan and by the conditions of the permit and are also limited by Town Bylaws with respect to parking of trucks in the downtown area.
- 10.389 - The proposal provides adequate methods of disposal and /or storage for sewage, refuse, recyclables and other wastes because the building is connected with the town sewer system and the Management Plan describes how refuse and recyclables are handled and there is a condition in the permit with respect to waste oil disposal.
- 10.391 and 10.395 - The proposal protects, to the extent feasible, unique or important natural, historic or scenic features and does not create disharmony with respect to the scale and architecture of existing buildings because there will be no changes to the exterior of the building other than a sign with downcast lighting and these will be reviewed and approved by the Board.
- 10.393 - The proposal provides protection of adjacent properties by minimizing the intrusion of lighting because lighting will be downcast, in accordance with the conditions of the permit and any changes to exterior lighting shall be reviewed and approved by the Board at a public meeting.
- 10.398 - The proposal is in harmony with the general purpose and intent of the Zoning Bylaw because it enhances the quality of life in the downtown.

Public Meeting – Zoning Board Decision

Mr. Frank MOVED to approve the conditions and findings. Ms. Greenbaum SECONDED the motion. The Board VOTED unanimously to approve the conditions and findings.

Mr. Frank MOVED to approve the application with conditions. Ms. Greenbaum SECONDED the motion.

For all the reasons stated above the Board VOTED unanimously to grant a Special Permit with conditions, under Section 3.352.1 of the Zoning Bylaw, to operate a Class II restaurant, open until 2 a.m., as applied for by Robert Lowry, at 23-25 North Pleasant Street (Map 14A, Parcel 50, B-G Zone).

BARBARA FORD

HILDA GREENBAUM

RUSSELL FRANK

FILED THIS _____ day of _____, 2007 at _____,
in the office of the Amherst Town Clerk _____.

TWENTY-DAY APPEAL period expires, _____ 2007.

NOTICE OF DECISION mailed this _____ day of _____, 2007
to the attached list of addresses by _____, for the Board.

NOTICE OF PERMIT or Variance filed this _____ day of _____, 2007,
in the Hampshire County Registry of Deeds.

Town of Amherst
Zoning Board of Appeals

SPECIAL PERMIT

The Amherst Zoning Board of Appeals hereby grants a Special Permit, under Section 3.352.1 of the Zoning Bylaw, to operate a Class II restaurant, open until 2:00 a.m., as applied for by Robert Lowry, at 23-25 North Pleasant Street (Map 14A, Parcel 50, B-G Zone), with the following conditions:

1. The proposed sign design, including details related to size, materials, colors and placement, shall be presented to the Design Review Board for recommendations, following which those recommendations and final sign designs shall be presented to the Zoning Board of Appeals for review and approval at a public meeting.
2. No alcohol shall be served.
3. The hours of operation shall be 11 a.m. to 2 a.m.
4. There shall be seating for a maximum of sixteen (16) people.
5. A maximum of three (3) employees shall be on the premises at one time.
6. Music shall only be played within the building and the decibel level of any interior music audible outside the building shall not rise above the level of ambient noise at the property boundary.
7. An employee shall be assigned to manage patrons and crowd behavior on the property if this becomes necessary.
8. Plans for handling and disposing of waste oil shall be presented for review and approval by the Board at a public meeting. If waste oil is stored outside it shall be kept secure from vandalism and spillage.
9. Deliveries to the restaurant shall be limited to between the hours of 8 a.m. and 3 p.m.
10. The restaurant shall be responsible for keeping the public sidewalk in front of the establishment and within 15 feet on either side of the premises including the gutter in North Pleasant Street free from all trash and litter associated with the establishment.
11. Exterior lighting shall be downcast.
12. The restaurant interior shall be constructed according to the floor plan approved by the Board on March 8, 2007.
13. The restaurant shall be managed according to the Management Plan approved by the Board on March 8, 2007.
14. Following final approval, any changes to lighting or signage shall be submitted to the Board for review and approval at a public meeting.
15. Upon any change of ownership a Management Plan shall be submitted to the Board for review and approval at a public meeting and to determine whether a new Special Permit will be required.

BARBARA FORD, Chair
Amherst Zoning Board of Appeals

DATE